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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,221	06/27/2003	Peter R. Van Tyle	MAEE 2 00049	7552

7590 02/25/2005

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EXAMINER

OSELE, MARK A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/609,221

Applicant(s)

VAN TYLE ET AL.

Examiner

Mark A Osele

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 and 60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-12, 17, 18, 20-25 and 31-41 is/are allowed.
- 6) ☒ Claim(s) 1-5, 13-16, 19, 26-30, 42-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12142004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 15-16, 19, and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Niermann '974. Niermann '974 shows a tape dispenser comprising an annular support, 44, for a roll of tape and a radially extending dispensing arm, 56, having a top and a bottom, said bottom including a tape guide along which tape is dispensed, the tape guide having an outer end, laterally spaced apart opposite sides and a central portion, 78, between and spaced below said sides for imparting a concave contour to the tape. Niermann '974 further shows a tape applicator, 90, with a serrated cutting edge, 88, forward of the outer end of the bottom. Niermann '974 also shows tape retaining tabs (See Figs. 7-8) extending inwardly from side walls of the dispensing arm.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Niermann '974 in view of Samuelson. Samuelson shows tape retaining tabs, 34. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the tape retaining tabs of Samuelson in to the apparatus of Niermann '974 because Samuelson teaches that tabs help maintain the cut end of the tape adjacent the guide surface and out of contact of the surface of the roll when not in use (column 2, lines 48-53).

5. Claims 5 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niermann '974 in view of Regan. Niermann '974 shows the instantly claimed features but fails to show a plurality of ribs. Regan shows a tape dispenser comprising an annular support, for a roll of tape and a radially extending arm having a top and bottom, said bottom including a tape guide with laterally spaced opposite sides and a central portion of ribs, 114, 116, between and below said sides. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the plurality of ribs of Regan to the tape dispensing arm of Niermann '974 because Regan teaches that these ribs allow for positioning of a tape guide to correspond to the width of tape being dispensed (column 3, lines 52-66).

6. Claims 26 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard. Barnard shows a tape dispenser comprising a planar wall, 11, a tape roll support, 15, extending transverse to the wall and having an axis and an end spaced

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from the planar wall, a heptagonal wall extending transverse to said planar wall and being radially spaced from said tape roll support and overlying a portion thereof, said planar wall including a first arm portion, 14, 25, extending radially outwardly of said tape roll support, a second arm, 14a, 14c, portion extending from said heptagonal wall transverse to said first arm portion and having an end spaced toward said end of said tape roll support, a planar third arm portion (not numbered) extending from said end of said second arm portion parallel to said first arm portion, said first and third arm portions having opposed inner sides and bottom edges, and a tape guide, 17, between said inner sides including guide surfaces on said inner sides and a central portion between and spaced below said guide surfaces. Barnard also has a tape applicator (not numbered) upwardly and outwardly of the tape and a cutting edge, 22. Barnard fails to show an arcuate wall. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the heptagonal wall of Barnard arcuate because arcuate walls can be more comfortable to grip and have a desirable design aesthetic. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cutting edge of Barnard serrated because serrated cutting edges are conventional for cutting adhesive tapes.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Samuelson. Samuelson shows tape retaining tabs, 34. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the tape retaining tabs of Samuelson in to the apparatus of Barnard because Samuelson

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teaches that tabs help maintain the cut end of the tape adjacent the guide surface and out of contact of the surface of the roll when not in use (column 2, lines 48-53).

8. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Dretzka et al. Barnard fails to show ledges. Dretzka et al. shows ledges, 40, extending from parallel arm walls. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the ledges of Dretzka et al. in to the apparatus of Barnard because Dretzka et al. teaches that these ledges are useful for attaching sales promotion materials thereto (column 6, lines 29-46).

9. Claims 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Thompson et al. The references as combined fail to show a brake for the tape roll. Thompson et al. shows a tape dispenser wherein the arcuate wall, 56 is movable toward the tape roll to provide a braking function. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the brake of Thompson et al. into the apparatus of Barnard to completely stop the dispensing of the tape during tape cutting (column 5, lines 3-18).

10. Claims 45, 47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Lin. The references as combined shows the claimed limitations except for the brake. Lin show a tape dispenser with a manually operable brake of compressible plates 33A and 33B pressing a portion of a wall against

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the hub. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the known brake of Lin into the apparatus of Barnard because braking of the roll prevents free wheeling of the tape (column 3, lines 20-43).

11. Claims 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niermann '974 in view of Lin. Niermann '974 shows the claimed limitations except for the brake. Lin show a tape dispenser with a manually operable brake of compressible plates 33A and 33B pressing a portion of a wall against the hub. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the known brake of Lin into the apparatus of Niermann '974 because braking of the roll prevents free wheeling of the tape (column 3, lines 20-43).

#### ***Allowable Subject Matter***

12. Claims 6-12, 17-18, 20-25, and 31-41 are allowed.

#### ***Response to Arguments***

13. Applicant's arguments with respect to claims 1-5, 13-16, 19, 26-30, 42-48 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A Osele whose telephone number is 571-272-1235. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**MARK A. OSELE**  
**PRIMARY EXAMINER**

February 22, 2005